



T-Mobile USA, Inc.
601 Pennsylvania Avenue, Washington, DC 20004

April 16, 2020

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *GN Docket No. 20-32, Establishing a 5G Fund for Rural America*

Dear Ms. Dortch:

On April 14, 2020, Cathleen A. Massey, Vice President, Federal Regulatory Affairs, Indra Sehdev Chalk, Director, Federal Regulatory Affairs, T-Mobile USA, Inc. (“T-Mobile”),¹ Rebekah Goodheart of Jenner & Block LLP, and I and spoke via telephone with Commissioner Michael O’Rielly and his Wireline Legal Advisor, Arielle Roth, and, separately, with Nicholas Degani, Senior Counsel for Chairman Ajit Pai, and Preston Wise, Rural Broadband Advisor for Chairman Pai. On April 15, we spoke with Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety for Commissioner Jessica Rosenworcel,² and, on April 16, we spoke with Commissioner Brendan Carr, and his Legal Advisor, Joseph Calascione, and, separately, Bill Davenport, Chief of Staff & Senior Legal Advisor for Wireless and International for Commissioner Geoffrey Starks.

During the meetings, T-Mobile expressed support for the Federal Communications Commission’s (“Commission” or “FCC”) efforts to ensure rural areas have access to 5G service with the proposed 5G Fund for Rural America (“5G Fund”),³ which seeks to accelerate deployment of critical 5G infrastructure to those parts of the country that can least afford to be

¹ T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company. T-Mobile and Sprint are now one company operating under the name T-Mobile. The merger closed on April 1, 2020.

² Cathleen Massey did not join the call with Mr. Litman.

³ *In re Establishing a 5G Fund for Rural America*, Notice of Proposed Rulemaking and Order, GN Docket No. 20-32, FCC-CIRC2004-02 (rel. April 2, 2020), <https://docs.fcc.gov/public/attachments/DOC-363491A1.pdf> (“*Draft NPRM*”).

left behind. With its transaction with Sprint now completed,⁴ T-Mobile intends to fully deploy its new spectrum assets and quickly build upon its market leadership in 5G mobile broadband deployment. As noted in the Draft NPRM, as a condition of the Commission's approval of the transaction, T-Mobile has committed to covering 90% of the country's rural population with 5G within six years.

T-Mobile shares the Commission's goals of directing finite universal service support to areas that are truly unserved and avoiding overbuilds. However, as proposed, the Draft NPRM focuses heavily on defining such unserved areas as those areas outside of where T-Mobile will deploy its 5G network to meet its merger conditions. T-Mobile recommends that the Commission look at more objective measures and take a more holistic look at industry 5G deployment, rather than focusing exclusively on T-Mobile. To create a more balanced record, T-Mobile outlined the following concerns and proposed changes.

First, the Draft NPRM currently proposes to "permit" T-Mobile to submit planned 5G deployment data. To the extent the Commission pursues this approach of singling out T-Mobile, which it should not for reasons described below, the Draft NPRM should emphasize that submission of any data, outside of the Form 477 or Digital Opportunity Data Collection ("DODC"), is completely voluntary.

Second, T-Mobile's commitments under the Commission's Merger Order are population based and do not commit T-Mobile to deploy 5G to defined geographies. Most importantly, the clear language of the FCC's Merger Order gives T-Mobile flexibility to identify where to deploy 5G, consistent with its overall population-based benchmarks.⁵ This makes perfect sense, given that deployment plans can change substantially over time in response to marketplace realities and conditions on the ground. These can include population shifts, the development of new communities and highways, difficulties and delays in constructing in a given area, and the availability of funding. Further, the FCC-based commitments do not limit T-Mobile to deploying 5G only to 90% of rural areas, and the company could well exceed that amount. The Commission's Merger Order gave T-Mobile flexibility to adapt its plans to market conditions, and the 5G Fund should not undermine this approach. Simply put, the exact census tracts and precise contours of T-Mobile's 5G network six years from now are not fixed, and thus, it is not practicable to be the basis for the 5G Fund.

Third, the Draft NPRM should recognize that a company's planned deployment is extremely sensitive competitive information. Advance disclosure of one company's plans would give competitors a long lead time to plan and react to the disclosed strategy while limiting the

⁴ *In re Applications of T-Mobile US, Inc., and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578 (2019) ("*Merger Order*").

⁵ *See Merger Order*, 34 FCC Rcd at 10697-98 ¶ 270.

company's ability to react in turn. That would degrade, not enhance, marketplace competition and reduce benefits to the public. Instead of relying on competitors to disclose their deployment strategies to each other, the Commission should instead focus on more objective criteria or use data from the Form 477 or DODC aggregated from all providers. For example, Option A of the Draft NPRM focuses more logically on identifying eligible areas for funding based upon publicly available metrics of rurality.⁶ The Commission should consider this and other methods to fund deployment in areas with the lowest population density. These are the areas least likely to coincide with privately funded deployments by T-Mobile or other carriers and are most in need of subsidies.

Fourth, T-Mobile is not the only carrier with plans to bring 5G to rural areas. If the Commission truly wants to avoid overbuilding, it must consider the future 5G deployment plans of *all* mobile providers.⁷ T-Mobile therefore recommends that the Draft NPRM ask additional questions about the practicality of trying to assess mobile carriers' future 5G plans to identify eligible areas and seek comment about other potential methods for limiting overbuild.

Finally, if the Commission determines that 5G Fund support should not be used in areas where carriers have federal, state, or local commitments or are receiving support from another state or federal program that could be used to support 5G networks, that determination should be applied to all carriers, not just T-Mobile.⁸

With these concerns in mind, T-Mobile suggests adding the following underlined text to paragraphs 23, 129, 130, and 132 of the Draft NPRM and striking the crossed-out text in paragraphs 23, 129, 130, and 132 (footnote text omitted):

23. Binding commitments made by T-Mobile to deploy 5G service to 90% of rural Americans (and 99% of the population nationwide) within six years will result in extensive 5G coverage across many rural and hard-to-serve areas of the nation,~~and~~. Other carriers have also announced plans to deploy 5G services over this period. These future deployments could inform our analysis in several respects. First, these T-Mobile's commitments are measured by population covered rather than a defined geographic area. While we expect that these commitments will result in deployment of 5G service to many areas including areas that may lack 4G LTE service today, based on staff analysis, they

⁶ See *Draft NPRM* ¶¶ 24-32. The Commission appropriately inquires which of the available datasets and methodologies are most likely to minimize potential overlaps with 5G deployments by T-Mobile and other carriers.

⁷ See *id.* ¶ 1 n.2 (citing examples of planned 5G deployments); see also ¶ 16 n.31.

⁸ AT&T, for example, is receiving funding for FirstNet and reports indicate that "FirstNet is AT&T's Springboard to 5G." See Kelly Hill, *FirstNet is AT&T's Springboard to 5G*, RCRWireless News (Mar. 13, 2019), <https://www.rcrwireless.com/20190313/carriers/firstnet-is-atts-springboard-to-5g>; AT&T, *AT&T Lays the Foundation for 5G and Public Safety with Network Investments* (Dec. 12, 2019), https://about.att.com/newsroom/2019/network_updates_att.html.

could still leave up to approximately 81% of the rural land area of the United States uncovered. We also recognize that T-Mobile has six years to deploy and the rural population that will be covered may not be determined yet and could change over time. *Second*, we believe it would be inappropriate to allow the use of high-cost support to fulfill merger conditions, and therefore expect that the support awarded via the 5G Fund would be used to deploy 5G service to areas other than where ~~T-Mobile~~ mobile wireless carriers that have received support to deploy 5G, or have binding merger commitments related to 5G, will deploy. *Third*, if we do not adequately account for ~~T-Mobile's commitments~~ mobile wireless carriers' existing 5G deployment plans, we risk using finite universal service 5G Fund support to overbuild areas where ~~T-Mobile already has an enforceable obligation~~ mobile wireless carriers may already be planning to deploy. We seek comment on these proposals and assumptions, including the costs and benefits of either option.

[...]

129. We tentatively conclude that ~~T-Mobile providers~~ should not be permitted to use any eligible areas for which it might win 5G Fund support to fulfill ~~its~~ any transaction-specific rural commitments. We seek comment on two approaches to implement this tentative conclusion. *First*, because T-Mobile has transaction commitments to cover a certain percentage of population rather than specific areas, we seek comment on allowing T-Mobile to make voluntary pre-auction ~~binding commitments to deploy~~ disclosures about completed or in-progress deployment of 5G services in eligible areas within the adopted deployment milestones for the 5G Fund without receiving 5G Fund support for those areas, and without otherwise prohibiting T-Mobile from participating in the bidding process. Would allowing T-Mobile and other mobile wireless carriers to “win” an eligible area before the 5G Fund auction for \$0 align with our goal of directing limited universal service funds to areas that would not otherwise see deployment of 5G networks? If we were to allow this, are there any restrictions on where ~~T-Mobile carriers~~ should be able to make such ~~commitments~~ disclosures?

130. Second, to prevent overbuilding, we seek comment on permitting ~~T-Mobile~~ mobile wireless carriers to voluntarily identify areas before the auction where ~~it~~ they intends to deploy 5G service, to the extent those plans are known pre-auction, and removing these areas from the list of areas eligible to win support in the auction. If we were to allow ~~T-Mobile~~ mobile wireless carriers to voluntarily identify such areas, we seek comment on how to ensure that ~~T-Mobile~~ 5G service is deployed in these areas, including enforcement mechanisms. We also seek comment on whether there should be restrictions on which areas T-Mobile or other mobile wireless carriers may identify, and, if restrictions should be adopted, we seek comment on the specifics of these restrictions. If T-Mobile or other mobile wireless carriers voluntarily submit information, we seek comment on mechanisms to protect the confidentiality of this sensitive information.

131. Recognizing that the 5G Fund is completely separate from T-Mobile's merger commitments, ~~We~~ we seek comment on any other alternatives to address the interaction between the T-Mobile merger conditions and our 5G Fund objectives and we ask commenters to provide specific implementation ideas to support any alternatives they propose.

132. Regarding ~~potential~~ other mobile wireless carriers' future transactions, we similarly tentatively conclude that no party may meet any federal, state, or local commitments or 5G deployment merger conditions adopted in any other transactions with 5G Fund support. We seek comment on using similar mechanisms as discussed above for T-Mobile and any alternatives to align merger commitments in any potential future transactions with our 5G Fund objectives. We seek comment on these proposals and any alternatives to best take into account existing and future transaction conditions in our consideration of awarding 5G Fund support. We also tentatively conclude that we should adopt a similar prohibition to prevent mobile wireless carriers receiving other federal, state, or local funding to support the deployment of 5G networks from receiving 5G Fund support in these areas.

Pursuant to Section 1.106 of the Commission's rules, a copy of this letter has been submitted in the record of the above-referenced proceeding, and copies have been sent to those members of the Commission's staff present at the meetings described above. If there are any questions regarding the foregoing, please contact the undersigned.

Sincerely,

/s/ Steve B. Sharkey

Steve B. Sharkey,
Vice President, Government Affairs
Technology and Engineering Policy

cc: Commissioner Michael O'Rielly
Commissioner Brendan Carr
Nicholas Degani
Preston Wise
Arielle Roth
Travis Litman
Joseph Calascione
Bill Davenport